

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DMITRY KRYUCHKOV,

Plaintiff,

1

SPAIN STREET LLC,

Defendant.

CASE NO. C19-876 MJP

ORDER DENYING MOTION TO
APPOINT COUNSEL, DECLINING
TO SERVE AND GRANTING
LEAVE TO AMEND

Plaintiff has filed a *pro se* complaint employment discrimination under Title VII of the
Rights Act, 42 U.S.C. §§ 2000e to 2000e-17. Dkt. No. 4. Before the Court directs that a
plaint be served on the Defendant, it must screen the complaint to ensure that the alleged
viable claims against proper defendants. The Court has screened plaintiff's complaint
identified deficiencies that plaintiff must correct before the Court will order service. The
finds and ORDERS:

(1) Plaintiff was formerly employed at Steelhead Diner. He names as defendant Spain Street LLC. Plaintiff alleges that between October 2018 and April 27, 2019, he was

1 subjected to discriminatory treatment by personnel at the restaurant, which consisted of the
2 manager and the chef of the establishment repeatedly referring to him as “D-Train.” Plaintiff
3 asserts that this represented discrimination against him on the basis of his national origin
4 (Russian). Dkt. No. 1-1.

5 (2) Once a complaint is filed *in forma pauperis*, the Court must dismiss it prior to
6 service if it “fails to state a claim on which relief can be granted.” 28 U.S.C. § 1915(e)(2)(b)(ii).
7 To avoid dismissal, a complaint must contain sufficient factual matter, accepted as true, to state a
8 claim to relief that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 664 (2009). The
9 factual allegations must be “enough to raise a right to relief above the speculative level.” Bell
10 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). The complaint may be dismissed if it
11 lacks a cognizable legal theory or states insufficient facts to support a cognizable legal theory.
12 Zixiang v. Kerry, 710 F.3d 995, 999 (9th Cir. 2013).

13 The Court holds *pro se* plaintiffs to less stringent pleading standards than represented
14 plaintiffs and liberally construes a *pro se* complaint in the light most favorable to the plaintiff.
15 Erickson v. Pardus, 551 U.S. 89, 93 (2007). Nevertheless, § 1915(e) “not only permits but
16 requires a district court to dismiss an in forma pauperis complaint that fails to state a claim.”
17 Lopez v. Smith, 203 F.3d 1122, 1229 (9th Cir. 2000) (en banc). When dismissing a complaint
18 under § 1915(e), the Court gives *pro se* plaintiffs leave to amend unless “it is absolutely clear
19 that the deficiencies of the complaint could not be cured by amendment.” Cato v. United States,
20 70 F.3d 1103, 1106 (9th Cir. 1995).

21 (3) Plaintiff’s complaint is deficient for at least the following reason: (a) It is entirely
22 unclear how even the repeated use of the term “D-Train” constitutes an act of discrimination on
23 the basis of Plaintiff’s national origin. Plaintiff alleges no other acts or statements. (b) It is not

1 clear what the relationship of Defendant Spain Street LLC is to the Steelhead Diner or to the
2 manager and chef who are alleged to have taken part in the name-calling, nor are there any
3 allegations that Defendant Spain Street LLC directed the actions of the accused individuals or
4 was even aware of the actions of which Plaintiff complains.

5 (4) Based on the foregoing, the Court DECLINES to direct that plaintiff's complaint
6 be served and GRANTS him leave to file an amended complaint **within 30 days** of the date this
7 Order is signed. **If no amended complaint is timely filed or if plaintiff files an amended
8 complaint that fails to correct the deficiencies identified above, the Court may recommend
9 that this action be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim
10 upon which relief may be granted.**

11 The amended complaint must carry the same case number as this one. Plaintiff is advised
12 that an amended pleading operates as a *complete* substitute for an original pleading. *See Ferdik
13 v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, any amended complaint must clearly
14 identify the defendant(s), the constitutional or federal statutory claim(s) asserted, the specific
15 facts that plaintiff believes support each claim, and the specific relief requested.

16 Additionally, Plaintiff has filed a motion to appoint counsel. Dkt. No. 6. Generally, a
17 person has no right to counsel in civil actions. *See Campbell v. Burt*, 141 F.3d 927, 931 (9th Cir.
18 1998). A court has discretion to appoint counsel for indigent civil litigants pursuant to 28 U.S.C.
19 § 1915(e)(1), but an appointment of counsel should only be granted under “exceptional
20 circumstances.” *Agyeman v. Corrections Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004).
21 When determining whether “exceptional circumstances” exist, the Court considers “the
22 likelihood of success on the merits as well as the ability of the [plaintiff] to articulate his claims

1 pro se in light of the complexity of the legal issues involved.” Weygandt v. Look, 718 F.2d 952,
2 954 (9th Cir. 1983).

3 Plaintiff contends that the use of the term “D-Train” constituted discrimination against
4 him on the basis of his national origin. Plaintiff’s complaint evinces little likelihood of success
5 on the merits and Plaintiff has shown an ability to articulate his allegations in a lawsuit. Plaintiff
6 has not, therefore, presented exceptional circumstances that would justify the appointment of
7 counsel. The motion to appoint counsel is therefore DENIED.

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9 The Clerk is directed to send Plaintiff the appropriate forms so that he may file an
10 amended complaint.

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12 The clerk is ordered to provide copies of this order to Plaintiff.

13 Dated June 12, 2019.

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16 Marsha J. Pechman
17 United States Senior District Judge
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